

AMENDED IN ASSEMBLY MARCH 9, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 265

Introduced by Assembly Member Holden

February 10, 2015

An act to amend Section 2983.37 of the Civil Code, relating to consumer protection.

LEGISLATIVE COUNSEL’S DIGEST

AB 265, as amended, Holden. Consumer protection: buy-here-pay-here dealers.

Existing law requires buy-here-pay-here dealers, as defined, to provide buyers with specific warranties, disclosures, and services. Existing law prohibits a buy-here-pay-here dealer from locating a vehicle with electronic tracking technology or disabling a vehicle with starter interrupt technology unless specified requirements are met, and makes a violation of this prohibition a misdemeanor.

This bill would prohibit a buy-here-pay-here dealer from disabling a vehicle with starter interrupt technology unless the dealer also provides the buyer with specific written disclosures *and communications* 30 days before the dealer disables the ~~vehicle~~. *vehicle, as specified. The bill would also require a buy-here-pay-here dealer, if that dealer negotiated a contract pursuant to these provisions in specified languages, to deliver those written disclosures in the language in which the contract was negotiated.* By expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2983.37 of the Civil Code is amended
2 to read:

3 2983.37. (a) After a sale of a vehicle under this chapter, a
4 buy-here-pay-here dealer, as defined in Section 241 of the Vehicle
5 Code, shall not do any of the following:

6 (1) Utilize electronic tracking technology to obtain or record
7 the location of the vehicle, unless the buyer is expressly made
8 aware of the existence and use of the tracking technology by the
9 buy-here-pay-here dealer, the buyer's written consent is obtained,
10 and either subparagraph (A) or (A), (B), or both, apply:

11 (A) The electronic tracking technology is used solely to verify
12 and maintain the operational status of the tracking technology, to
13 repossess the vehicle, or to locate the vehicle to service the loan
14 or keep the loan current.

15 (B) The electronic tracking technology is used solely for an
16 optional service to the buyer and both of the following conditions
17 are met:

18 (i) The agreement to utilize electronic tracking technology for
19 the optional service is separate from the purchase and sale
20 agreement, is not a condition of the purchase or sale agreement
21 for the vehicle, and is executed after the completion of the purchase
22 or sale agreement for the vehicle.

23 (ii) The buyer is permitted to cancel the optional service at any
24 point in the future without affecting the sale of the vehicle, and is
25 informed of his or her ability to do so.

26 (2) Disable the vehicle by using starter interrupt technology,
27 unless the buy-here-pay-here dealer complies with all of the
28 following:

29 (A) At the time of the sale, the buy-here-pay-here dealer
30 provides the buyer written notice of both of the following:

31 (i) That the vehicle is equipped with starter interrupt technology
32 that the buy-here-pay-here dealer can use to shut down the vehicle
33 remotely.

(ii) That a warning will be provided no less than 48 hours before the use of the starter interrupt technology to shut down the vehicle remotely and the manner and method in which that warning will occur. The buy-here-pay-here dealer shall offer the buyer a choice of warning methods, including warning from the device, telephone call, ~~e-mail~~, *email*, or text message, if available, provided that the warning method does not violate applicable state or federal law.

(B) At least 30 days prior to disabling the vehicle for the buyer's failure to tender timely loan repayments, the buy-here-pay-here dealer ~~provides the buyer written notice of all~~ *does both* of the following:

(i) Provides the buyer written notice of all of the following:

~~(i)~~

(I) That the loan is past due.

~~(ii) That the buy-here-pay-here dealer may use starter interrupt technology to disable the vehicle within 30 days of the mailing date of the notice.~~

~~(iii) The amount currently due on the loan.~~

(II) The amount currently due on the loan.

~~(iv)~~

~~(III) The acceptable forms of payment of the amount currently due: due, so long as that form of payment is not prohibited by subdivision (b).~~

~~(IV) That the buy-here-pay-here dealer may use starter interrupt technology to disable the vehicle as of 30 days from the mailing date of the notice.~~

~~(v)~~

~~(V) That the vehicle will not be disabled if the buyer tenders the amount currently due on the loan to the buy-here-pay-here dealer in an specified in subclause (II) to the dealer using an acceptable form of payment within 30 days of the mailing date of the notice.~~

~~(vi)~~

~~(VI) That, if the loan amount due is not paid, a warning will be provided using the warning method specified at the time of sale to the buyer no less than 48 hours before the use of the starter interrupt technology to shut down the vehicle remotely.~~

(ii) Communicate, within 48 hours of mailing the notice required by clause (i), to the buyer that the notice has been sent. The buy-here-pay-here dealer shall offer the buyer at the time of sale

1 a choice of communication methods, including, a telephone call,
2 email, or text message, if available, provided that the warning
3 method does not violate applicable state or federal law. The
4 communication required by this clause shall provide the buyer
5 with notice of the following:

6 (I) That the loan is past due.

7 (II) The amount currently due on the loan.

8 (III) The acceptable forms of payment of the amount currently
9 due, so long as that form of payment is not prohibited by
10 subdivision (b).

11 (IV) That written notice of the past due loan has been mailed
12 to the buyers last known address and provide the mailing date of
13 the notice.

14 (V) That the buy-here-pay-here dealer may use starter interrupt
15 technology to disable the vehicle as of 30 days from the mailing
16 date of the notice.

17 (VI) That the vehicle will not be disabled if the buyer tenders
18 the amount specified in subclause (II) to the dealer using an
19 acceptable form of payment within 30 days of the mailing date of
20 the notice.

21 (VII) That, should the loan not be paid, a warning will be
22 provided to the buyer, using the method specified at the time of
23 sale, no less than 48 hours before the use of the starter interrupt
24 technology to shut down the vehicle remotely.

25 (C) A buy-here-pay-here dealer shall keep a physical copy of
26 all notices sent pursuant to clause (i) of subparagraph (B) for at
27 least one year following the mailing date of that notice.

28 (D) Any buy-here-pay-here dealer who negotiated any contract
29 pursuant to this chapter primarily in Spanish, Chinese, Tagalog,
30 Vietnamese, or Korean, orally or in writing, shall deliver the notice
31 required by subparagraph (B) to the other party to the contract
32 in the language in which the contract was negotiated.

33 ~~(E)~~

34 (E) In the event of an emergency, the buyer will be provided
35 with the ability to start a dealer-disabled vehicle for no less than
36 24 hours after the vehicle's initial disablement.

37 (b) A buy-here-pay-here dealer shall not require the buyer to
38 make payments to the seller in person. For purposes of this
39 subdivision, "payments" does not include the downpayment. If
40 the buyer tenders timely payment of a deferred downpayment, the

1 dealer shall not repossess the vehicle or impose any other charge
2 or penalty on the grounds that the payment was not made in person.

3 (c) A violation of this section is a misdemeanor punishable by
4 a fine not exceeding one thousand dollars (\$1,000).

5 SEC. 2. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.